

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #12	CCRB Case #: 201606760	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/05/2016 10:40 PM, Saturday, 08/06/2016	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 2/5/2018	EO SOL 2/5/2018	
Date/Time CV Reported Sun, 08/07/2016 3:26 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 08/07/2016 3:26 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Elvis Duran	21865	946965	PSA 7
2. Officers			PSA 7
3. DI Jerry Osullivan	00000	902151	PSA 7
4. LT Ramon Tejeda	00000	939564	PSA 7
5. POM Felix Baez	04759	953654	PSA 7
6. SGT Miguel Frias	1309	930184	PSA 7
7. SGT Raymond Contreras	01867	929933	PSA 7
8. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Eric Dym	00000	933762	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A . SGT Miguel Frias	Abuse of Authority: On August 5, 2016, at § 87(2)(b) [REDACTED] in the Bronx, Sergeant Miguel Frias stopped individuals.	A . § 87(2)(g) [REDACTED]
B . POM Elvis Duran	Abuse of Authority: On August 5, 2016, at § 87(2)(b) [REDACTED] in the Bronx, Police Officer Elvis Duran stopped individuals.	B . § 87(2)(g) [REDACTED]
C . POM Felix Baez	Abuse of Authority: On August 5, 2016, at § 87(2)(b) [REDACTED] in the Bronx, Police Officer Felix Baez stopped individuals.	C . § 87(2)(g) [REDACTED]

Officer(s)	Allegation	Investigator Recommendation
D . POM Elvis Duran	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran frisked an individual.	D . § 87(2)(g)
E . POM Felix Baez	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez frisked an individual.	E . § 87(2)(g)
F . SGT Miguel Frias	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias frisked individuals.	F . § 87(2)(g)
G . POM Elvis Duran	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran searched an individual.	G . § 87(2)(g)
H . POM Felix Baez	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez searched an individual.	H . § 87(2)(g)
I . SGT Miguel Frias	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias searched individuals.	I . § 87(2)(g)
J . POM Elvis Duran	Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran spoke discourteously to § 87(2)(b).	J . § 87(2)(g)
K . POM Felix Baez	Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez spoke discourteously to § 87(2)(b).	K . § 87(2)(g)
L . SGT Miguel Frias	Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias spoke discourteously to § 87(2)(b).	L . § 87(2)(g)
M . POM Elvis Duran	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran arrested § 87(2)(b).	M . § 87(2)(g)
N . SGT Miguel Frias	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias arrested § 87(2)(b).	N . § 87(2)(g)
O . POM Felix Baez	Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez arrested § 87(2)(b).	O . § 87(2)(g)
P . Officers	Discourtesy: On August 5, 2016, at the PSA 7 stationhouse, officers acted discourteously toward Jose § 87(2)(b).	P . § 87(2)(g)
Q . Officers	Discourtesy: On August 5, 2016, at the PSA 7 stationhouse, officers spoke discourteously to § 87(2)(b).	Q . § 87(2)(g)
R . DI Jerry Osullivan	Abuse of Authority: On August 6, 2016, at § 87(2)(b) in the Bronx, Deputy Inspector Jerry O'Sullivan arrested § 87(2)(b).	R . § 87(2)(g)
S . SGT Raymond Contreras	Off. Language: On August 6, 2016, at § 87(2)(b) in the Bronx, Sergeant Raymond Contreras made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).	S . § 87(2)(g)
T . SGT Raymond Contreras	Off. Language: On August 6, 2016, at § 87(2)(b) in the Bronx, Sergeant Raymond Contreras made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).	T . § 87(2)(g)
U . LT Ramon Tejeda	Abuse of Authority: On August 6, 2016, at § 87(2)(b) in the Bronx, Lieutenant Ramon Tejeda threatened to arrest § 87(2)(b).	U . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
V . An officer	Abuse of Authority: On August 6, 2016, at Bronx Central Booking, an officer searched § 87(2)(b) recording device.	V . § 87(2)(g)
W . POM Elvis Duran	Other: There is evidence suggesting Police Officer Elvis Duran provided a false official statement in violation of PG 203-08.	W . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

## Case Summary

On August 7, 2016, § 87(2)(b) filed this complaint via the CCRB website. On the same date, § 87(2)(b) filed a duplicate complaint with IAB.

On August 5, 2016, at approximately 10:40 p.m., anti-crime officers PO Elvis Duran, PO Felix Baez, and Sgt. Miguel Frias, all of PSA 7, stopped two unknown males in front of a NYCHA building located at § 87(2)(b) in the Bronx (**Allegations A, B, and C: Abuse of Authority, § 87(2)(g)**). PO Duran and PO Baez frisked the males under the supervision of Sgt. Frias (**Allegations D, E, and F: Abuse of Authority, § 87(2)(g)**). PO Duran and PO Baez also allegedly searched the males under Sgt. Frias's supervision (**Allegations G, H, and I: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) who is the founder of an activist group known as § 87(2)(b) then arrived on the scene and began filming the officers. The officers warned and admonished the males they stopped without issuing summonses. As the officers walked away from the scene, they and § 87(2)(b) used profanity toward each other (**Allegations J, K, and L: Discourtesy, § 87(2)(g)**). PO Duran and Sgt. Frias then ordered § 87(2)(b) to disperse and when § 87(2)(b) did not leave, they placed him under arrest for disorderly conduct (**Allegations M, N, and O: Abuse of Authority, § 87(2)(g)**). On arriving inside the stationhouse, unknown PSA 7 officers recognized § 87(2)(b) began clapping and cheering his arrest, and used various profanity toward him (**Allegations P, and Q: Discourtesy, § 87(2)(g)**). While at the front desk of the stationhouse, PO Baez and PO Duran discovered a radio on § 87(2)(b) that was capable of transmitting on NYPD frequency. § 87(2)(b) was then charged with criminal use of an access device and unlawful possession of a radio (also **Allegations M, N, and O: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was transported to Bronx Central Booking where Bronx ADA Nicole Fitzpatrick declined to prosecute his case because she determined that the officers did not have probable cause to sustain § 87(2)(b)'s disorderly conduct and radio charges and § 87(2)(b) was released.

Deputy Inspector Jerry O'Sullivan was informed of § 87(2)(b)'s arrest and subsequent release and spoke to the Bronx District Attorney's Chief of Trial Divisions, Executive ADA Jeremy Shockett, and the Bronx District Attorney's Chief of Trial Division 57, ADA Nelida Velez. Following these conversations, ADA Velez instructed ADA James Waller to re-write § 87(2)(b)'s Criminal Court Complaint for Obstruction of Governmental Administration (OGA).

On August 6, 2016, at approximately 11:00 p.m., Lieutenant Eric Dym, Lieutenant Ramon Tejada, and Sgt. Raymond Contreras, also of PSA 7, re-arrested § 87(2)(b) at the § 87(2)(b) in the Bronx, under the direction of Deputy Inspector O'Sullivan (**Allegation R: Abuse of Authority, § 87(2)(g)**). Deputy Inspector O'Sullivan then arrived at the diner to supervise the re-arrest. During the re-arrest, § 87(2)(b)'s fellow activists, § 87(2)(b) and § 87(2)(b) filmed the officers and loudly protested their actions. At one point during these protests, Sgt. Contreras instructed § 87(2)(b) and § 87(2)(b) to get back using the statement, "Sweetie, you can't be on top of me like that" and "Sweetheart, please retire to a zone of safety" (**Allegations S and T: Offensive Language, § 87(2)(g)**). Sgt. Contreras then handcuffed § 87(2)(b) and escorted him out of the diner. § 87(2)(b) and the other activists followed them outside and § 87(2)(b) walked in front of Sgt. Contreras and § 87(2)(b) blocking them from approaching the officers' vehicle, while yelling profanity at the other officers. Sgt. Contreras said to § 87(2)(b) "Sweetheart, can you move?" (also **Allegation S: Offensive Language, § 87(2)(g)**). Lieutenant Tejada then escorted § 87(2)(b) away from Sgt. Contreras while saying, "Come over here before you get arrested" (**Allegation U: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was then transported to the PSA 7 stationhouse and from there to Bronx Central Booking where he was issued a DAT for OGA and re-released. While being checked in at

Central Booking, an officer allegedly searched § 87(2)(b)'s phone (**Allegation V: Abuse of Authority, § 87(2)(g)**).

Prior to § 87(2)(b)'s re-arrest, ADA Waller interviewed PO Duran who falsely stated that § 87(2)(b) obstructed the officers' ability to issue the unknown males with summonses. (**Allegation W: § 87(2)(g)**). PO Duran reviewed and signed an affidavit to this effect. During his CCRB interview, PO Duran repeated this false information and further elaborated that § 87(2)(b) got to within arms-reach of PO Baez (also **Allegation W: § 87(2)(g)**).

All of § 87(2)(b)'s criminal charges were dismissed in January of 2017. This case was on hold between September 27, 2016 and September 15, 2017 per the request of the Bronx District Attorney's Office, which was conducting a criminal investigation into the officers' conduct.

An Attorney was consulted in this case, which was marked sensitive in August 2016 due to its coverage in numerous media outlets (**01 Board Review**).

The investigation obtained numerous video and audio recordings of this case from § 87(2)(b)'s YouTube Channel, IAB, the Bronx DA, NYCHA, and § 87(2)(b).

- Snagit of § 87(2)(b)'s edited video of the incident (**09 Board Review**).
- Snagit of NYCHA security footage (**08 Board Review**).
- § 87(2)(b)'s audio of the incident (**13 Board Review**).
- § 87(2)(b)'s second video of the incident (**35 Board Review**).
- § 87(2)(b)'s August 16, 2016 press conference (**60 Board Review**).
- § 87(2)(b)'s two short audio clips of officers allegedly unlocking his phone (**40 and 41 Board Review**).
- § 87(2)(b)'s video interview with the Bronx DA Integrity Unit (**38 Board Review**).
- Snagit of § 87(2)(b)'s unedited video of the incident provided by the Bronx DA (**61 Board Review**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias stopped individuals.**

**Allegation (B) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran stopped individuals.**

**Allegation (C) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez stopped individuals.**

§ 87(2)(b) said he observed PO Duran, PO Baez, and Sgt. Frias's park their unmarked vehicle next to the NYCHA building at § 87(2)(b). In front of the building stood two males and three females who were talking and leaning on the fence. There was also a white Styrofoam cup perched on a gate, but no other containers. The females walked away as PO Duran, PO Baez, and Sgt. Frias approached and stopped the two males. In an earlier phone statement to the CCRB, § 87(2)(b) did not mention seeing females. In his IAB statement, § 87(2)(b) said that he first approached as the officers stopped and searched the males (**02-04, 45, and 54 Board Review**).

PO Duran said that as he, PO Baez, and Sgt. Frias drove down § 87(2)(b), they observed two males drinking alcohol in a lit area front of the NYCHA building. The officers observed two foam cups and a glass liquor bottle on the ground near the males. PO Duran could see the label on

the bottle and the color of the liquid during the incident, but did not remember these details at the time of his interview. PO Duran said the officers intended to issue the males C-summonses for drinking in public, but did not do so because of § 87(2)(b)'s activities described below under **Allegation W (05 Board Review)**.

Sgt. Frias § 87(2)(g) said he was not sure whether there was lighting where the males were standing. Sgt. Frias also added that the males were drinking from the foam cups, when the officers first saw them, and that the bottle was on the ground directly in front of them. Sgt. Frias did not recall whether the bottle was in the open or concealed in a bag and did not remember what the bottle looked like **(06 Board Review)**.

PO Baez's statement was generally consistent with that of PO Duran and Sgt. Frias, but he said he observed the males drinking beer out of "tall 40 ounce" cans that were in the open. PO Baez also said that when the officers approached the males, the male he spoke to admitted they were drinking alcohol and appeared intoxicated by slurring his words **(07 Board Review)**.

Upon reviewing NYCHA security footage of this incident, at 00:23, PO Duran, PO Baez, and Sgt. Frias appear to exit their vehicle and walk toward the males. At 00:54 an officer appears to turn on a flashlight and shine it towards the males' legs while the officers speak to the males **(08 and 50 Board Review)**.

Upon reviewing § 87(2)(b)'s edited video of the incident at 00:03 the camera zooms in on a male wearing a white and black baseball cap and a dark colored shirt standing next to Sgt. Frias who is holding a flashlight. Two other males in dark clothing are observed standing to the right of Sgt. Frias. A white bottle and a white cup can be seen on top of a wall near the males. At 00:10 an officer's voice can be heard asking, "This is water in here right?" **(09 and 51 Board Review)**.

Officers need reasonable suspicion to stop a person. People v. De Bour, 40 NY.2d 210 (1976) **(10 Board Review)**.

§ 87(2)(g)  
[REDACTED]

**Allegation (D) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran frisked § 87(2)(b)**  
**Allegation (E) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez frisked § 87(2)(b)**  
**Allegation (F) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias frisked individuals.**  
**Allegation (G) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran searched § 87(2)(b)**  
**Allegation (H) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez searched § 87(2)(b)**  
**Allegation (I) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias searched individuals.**

§ 87(2)(b) said that PO Duran and PO Baez both patted down and searched the males' pants pockets (**02 Board Review**).

PO Duran acknowledged that he frisked one of the males while PO Baez frisked the other. PO Duran did not observe any bulges on either male nor did he make any observations that led him to suspect that either male was armed. However, PO Duran said he feared for his safety because he was standing in front of someone, who potentially had a gun, while he was conducting an investigation. PO Duran had this fear because the entire Patterson Housing Project was a crime prone location known for drugs, guns, and violent crimes. Sgt. Frias did not give any instructions related to the frisks and PO Duran never went into the male's pockets (**05 and 55 Board Review**).

PO Baez's statement was generally consistent with that of PO Duran, but he added that he, PO Duran, and Sgt. Frias normally frisked people whenever they stopped them to ensure they did not have weapons (**07 Board Review**).

Sgt. Frias's statement was generally consistent with those of PO Duran and PO Baez. Sgt. Frias confirmed that he did not issue any instructions pertaining to the frisk, but that he, PO Duran, and PO Baez generally frisked any individual receiving a C-summons (**06 Board Review**).

Upon reviewing § 87(2)(b)'s edited video of the incident, at 00:07 PO Duran reaches down and appears to touch the ankle area of one of the males. At 00:10 Sgt. Frias says, "Turn around," turns a male toward the wall, and lifts the male's arms up. At 00:12 the male with the white cap and dark t-shirt appears to rest his hands on top of the wall. PO Baez then bends over and appears to pat the male's left leg and then his right leg (**09 and 51 Board Review**).

If an officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon or instrument. An officer may conduct a search to remove an object that the member felt during a frisk and reasonably suspects is a weapon or dangerous instrument (P.G. 212-11) (**11 Board Review**).

Police officers may frisk an individual who has been issued a summons, but only if the police officer reasonably suspects that the suspect is armed and dangerous. The issuance of a summons alone does not justify a frisk. Knowles v. Iowa, 525 U.S. 113 (1998) (**12 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (J) Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran spoke discourteously to § 87(2)(b)**  
**Allegation (K) Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez spoke discourteously to § 87(2)(b)**  
**Allegation (L) Discourtesy: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not mention PO Duran, PO Baez, or Sgt. Frias speaking discourteously to him in any of his statements (**02-04, 45, and 54 Board Review**).

Upon reviewing § 87(2)(b)'s audio of the incident, at 18:50 § 87(2)(b) states, "Y'all need to stop harassing people for no fucking reason, though." Sgt. Frias or PO Duran said, "Did we try to stop you? Nah right? Then why the hell you cursing at me?" § 87(2)(b) then says, "I got the right to... curse. I can curse" and, "I can say whatever the fuck I want to say." PO Duran then says, "You want to tell me what the fuck I wanna say?" § 87(2)(b) states, "What you want to do? You want to show your true colors?" At 19:02, a voice can be heard in the background stating, "Shut the fuck up." § 87(2)(b) replies, "You shut the fuck up! Alright, motherfucker?" Sgt. Frias states, "Alright, motherfucker? Do me a favor bro. I'm giving you lawful order." At 20:50 § 87(2)(b) says, "You didn't have a reason to stop them." At 20:54 PO Baez then said, "Possession of alcohol, you fucking idiot." At 0:21:45, § 87(2)(b) says, "I said that y'all stopped those people for no reason at all." At 22:00 PO Duran states, "No you did not, you said 'Shut the fuck up'" (**13 and 52 Board Review**).

PO Duran denied that he or any officer used any profanity toward § 87(2)(b) (**05 and 55 Board Review**).

Sgt. Frias did not recall whether he or any officer used any profanity toward § 87(2)(b). Sgt. Frias acknowledged giving § 87(2)(b) the order, "...do me a favor bro. Walk down..." in § 87(2)(b)'s audio recording (**06 Board Review**).

PO Baez did not recall any specific profanity that he or the other officers used toward § 87(2)(b) but said that there was a "foul mouthed exchange" between § 87(2)(b) and the officers who all used profanity (**07 Board Review**).

Officers be courteous and respectful (P.G. 203-09) (**56 Board Review**).

§ 87(2)(g)

**Allegation (M) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Elvis Duran arrested § 87(2)(b)**  
**Allegation (N) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Sergeant Miguel Frias arrested § 87(2)(b)**  
**Allegation (O) Abuse of Authority: On August 5, 2016, at § 87(2)(b) in the Bronx, Police Officer Felix Baez arrested § 87(2)(b)**

§ 87(2)(b) said that he filmed PO Duran, PO Baez, and Sgt. Frias from a distance of approximately 20 feet and took a few more steps back after PO Baez told him to keep his distance. When the officers were done with the stop, they walked back toward their vehicle past



§ 87(2)(b) Along the way, § 87(2)(b) commented, “I’ve seen you fucking driving around looking for somebody to harass” and an officer told § 87(2)(b) to have a good night. As soon as § 87(2)(b) shut his camera off, which makes a clicking sound, Sgt. Frias turned back and said, “Don’t curse at me.” § 87(2)(b) apologized and said that he just wanted to make a statement that he had seen the officers looking for people to harass. Sgt. Frias then said, “Do me a favor and get out of here. I don’t want to see you around here anymore.” § 87(2)(b) replied that he did not have to leave because he had not broken any laws. Sgt. Frias told § 87(2)(b) “I’m giving you a direct order.” § 87(2)(b) asked if he had broken a law. Sgt. Frias replied, “Now you did” and handcuffed § 87(2)(b) § 87(2)(g)

(02-04, 45, and 54 Board Review).

PO Duran said the officers were obtaining information from the males to issue C-summonses when § 87(2)(b) approached and cursed at the officers. PO Duran did not know of § 87(2)(b) or his organization prior to this incident. § 87(2)(b) moved closer to the officers and PO Duran told him to not get any closer, but § 87(2)(b) failed to comply and got within approximately an arm’s length of PO Baez. PO Baez instructed § 87(2)(b) to step back, but he kept coming closer. PO Duran, PO Baez, and Sgt. Frias did not believe it was safe to stay on scene as § 87(2)(b) was drawing attention to them and individuals were gathering. Additionally, the officers were aware of past incidents where individuals threw objects out windows at officers. As the officers were walking back to their vehicle, § 87(2)(b) followed them and cursed at them. The officers instructed § 87(2)(b) three times to stay back. § 87(2)(b)’s yelling caused a crowd of six to seven individuals to gather and additional individuals who were walking by would briefly stop and then keep walking. This crowd did not say or do anything. All the officers instructed § 87(2)(b) numerous times to not get any closer, but as § 87(2)(b) did not comply the officers arrested him for disorderly conduct. At the stationhouse, PO Duran found a radio on § 87(2)(b) that an officer confirmed could transmit on NYPD. PO Duran charged § 87(2)(b) with unlawful possession and use of the radio because he was aware of an earlier incident where an unknown individual threatened an NYPD Captain over the radio. Other than § 87(2)(b)’s radio, PO Duran had no evidence that § 87(2)(b) was this individual. PO Duran did not add charges against § 87(2)(b) because he was annoyed with him, did not charge § 87(2)(b) with felony counts to retaliate against him, and did not intentionally charge § 87(2)(b) with counts that would make him ineligible for a DAT. The decisions to charge § 87(2)(b) with felony counts and not issue him a DAT were solely PO Duran’s as the arresting officer and no supervisors gave him any instructions.

On being shown § 87(2)(b)’s edited video of the incident, PO Duran pointed out that between 01:29 and 01:34, the video showed § 87(2)(b) moving back and forth multiple times getting close to the officers and then moving away. It was pointed out to PO Duran that between these time stamps, § 87(2)(b) appeared to be merely zooming his camera in and out. PO Duran responded that he was not a technician, but during the incident § 87(2)(b) was walking closer at that point. PO Duran also commented that § 87(2)(b)’s video was edited and did not capture the full scope of the incident as there was more cursing from § 87(2)(b) and officer instructions to stay back that were not captured. After listening to § 87(2)(b)’s audio, between 18:00 and 19:57, PO Duran said he was the officer who ordered § 87(2)(b) to walk down the street because he kept coming closer. PO Duran also confirmed that he discussed § 87(2)(b)’s charges with Sgt. Frias and PO Baez later at the stationhouse to try to find the right charge for § 87(2)(b) since he never arrested anyone with a radio before (05 and 55 Board Review).

Sgt. Frias § 87(2)(g) said that § 87(2)(b) stood approximately 10 feet from the officers while filming and did nothing to interfere with the stop other than cursing. Sgt. Frias also added that the crowd cause by § 87(2)(b) began yelling things along the lines of, “Here we go again. These cops. These pigs.” Sgt. Frias also said that he ordered § 87(2)(b) to disperse, which he felt was necessary despite the fact

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that the officers were leaving because § 87(2)(b) and the crowd he caused, were blocking pedestrian traffic on the sidewalk. After § 87(2)(b) refused a second order to disperse, Sgt. Frias decided to place him under arrest. Sgt. Frias confirmed that the decision to arrest § 87(2)(b) was not in retaliation for him filming. Sgt. Frias also said that § 87(2)(b)'s interference with their investigation could be considered OGA. Sgt. Frias initially said that it was his decision to charge § 87(2)(b) with possession and criminal use of his radio, but later said that unknown "higher ups" decided on this charge. Sgt. Frias also said the decision to not initially issue § 87(2)(b) a DAT was made somewhere up the chain of command.

Sgt. Frias commented that § 87(2)(b)'s video of the incident had been edited and cut several times so that it did not fully capture § 87(2)(b)'s curses toward the officers or their orders for him to stay back. Sgt. Frias confirmed that § 87(2)(b) never approached closer than what was shown in the beginning of the video. It was pointed out to Sgt. Frias that no individual can be heard cursing at the officers other than § 87(2)(b). Sgt. Frias said that the comments were probably overpowered by the officers' conversation with § 87(2)(b). It was pointed out that at 3:00:00 a voice is heard saying they were looking for 30-40 minutes to find a felony, but that possession of a radio was only a misdemeanor. Sgt. Frias said the officers were told that there was a felony charge for possessing a radio and they were looking for the proper charge, but that this was not to retaliate against § 87(2)(b) **(06 Board Review)**.

PO Baez § 87(2)(g) said that he was not sure whether the few bystanders watching the stop were drawn by § 87(2)(b) as the area is usually pedestrian heavy. PO Baez also said that the officers would not have issued the males summonses regardless of § 87(2)(b)'s actions. PO Baez further said that while the officers were leaving, the only civilians watching were on the sidewalk on the other side of the building. PO Baez confirmed that he spoke with PO Duran and Sgt. Frias about § 87(2)(b)'s charges at the stationhouse and was consistent that the officers did not arrest or charge § 87(2)(b) with certain offenses in order to retaliate against him **(07 Board Review)**.

Upon reviewing NYCHA security footage of this incident, at 00:23, PO Duran, PO Baez, and Sgt. Frias exit their vehicle and walk toward two males and speak to them while an officer holds a flashlight. At 00:57 a male in dark clothing, (the investigation identified as § 87(2)(b)) stands on the side walk to the right side. At 01:34, § 87(2)(b) positions himself on the sidewalk beside where the officer's vehicle is double parked, at least 20 feet from the officers. At 04:36, an officer walks to the left side of the screen, stops in front of a pile of trash bags, and appears to pour out liquid from a container he is holding in his hand. Throughout the footage, individuals enter and exit the NYCHA building and sit on the steps. A few individuals walk on the sidewalk past § 87(2)(b) and a few individuals approach and speak to the officers during the stop. No sizable crowd appears to gather and none of these individuals appear to speak to § 87(2)(b). At 04:46, the officers leave the males and walk in the direction of their vehicle past § 87(2)(b). At 05:05 § 87(2)(b) follows the officers who walk toward their vehicle and the officers stop and appear to speak to § 87(2)(b). At 05:38 the officers walk closely to § 87(2)(b) and appear to grab him. At 06:02 the officers escort § 87(2)(b) toward their vehicle, place him inside, and leave **(08 and 50 Board Review)**.

Upon reviewing § 87(2)(b)'s audio recording, at 15:05 PO Baez can be heard telling § 87(2)(b) to stay back. § 87(2)(b) replies that he is at a reasonable distance and continues to curse at the officers. At 0:18:40, the officers and § 87(2)(b) say goodnight to each other. § 87(2)(b) then says, "Y'all need to stop harassing people for no fucking reason, though." At 18:50, Sgt. Frias or PO Duran said, "Did we try to stop you?" PO Duran says, "Nah right? Then why the hell you cursing at me?" § 87(2)(b) and the officers continue to curse at each other. No other voices can be heard except one individual who yells, "Walk away!" At 19:02, Sgt. Frias states that he is giving § 87(2)(b) a lawful order. § 87(2)(b) refuses to leave saying he has a right to be there and Sgt. Frias repeats that he is giving a lawful order a few times. The officers and § 87(2)(b)

§ 87(2)(b) continue to argue over who started the confrontation. At 19:53, § 87(2)(b) asks why his camera is being taken and PO Duran replies that he is under arrest.

At 2:42:50, while the officers discuss what to charge § 87(2)(b) with at the stationhouse, Sgt. Frias is heard joking about paying an ADA to add a gun count to § 87(2)(b)'s charges. The three officers continue to discuss and joke about § 87(2)(b) using profanity and saying how he annoys them. The officers spend a significant amount of time reviewing legal information trying to find a felony charge pertaining to § 87(2)(b)'s radio, but they can only find misdemeanors. Sgt. Frias also explains that they cannot charge § 87(2)(b) with OGA because he complied with instructions to stand back and never came into physical contact. At 03:03:20 PO Duran and Sgt. Frias discuss whether § 87(2)(b)'s radio is an access device and after determining that there is a felony charge pertaining to access devices, decide to charge § 87(2)(b) with that and disorderly conduct. At 03:03:50 PO Duran laughs and says, "Well they're going to DP this one probably" **(13 and 52 Board Review)**

Upon reviewing § 87(2)(b)'s edited video of the incident, at 00:31 PO Baez points at § 87(2)(b)'s camera and tells him to stay back. At 02:10 § 87(2)(b) zooms out and shows that he is still at least 20 feet from the officers **(09 and 51 Board Review)**.

§ 87(2)(b)'s arrest report, prepared by PO Duran and approved by Sgt. Frias shows that he was charged with disorderly conduct for refusing to move on, unlawful possession of radio devices, and criminal use of an access device **(26 Board Review)**.

A person is guilty of disorderly conduct when they engage in fighting or violent, tumultuous or threatening behavior, make unreasonable noise, use abusive or obscene language or make an obscene gesture in a public place, disturbs a lawful assembly, obstructs vehicular or pedestrian traffic, or congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse or creates a hazardous or physically offensive condition by any act. NY Penal Law section 240.20 **(14 Board Review)**.

A person is guilty of obstructing governmental administration in the second degree when they intentionally obstruct, impair, or pervert the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. NY Penal Law section 195.05 **(15 Board Review)**.

A person is guilty of unlawful possession of radio devices when they possess a radio device capable of receiving wireless voice transmission on any frequency allocated for police use or any device capable of transmitting and receiving a wireless voice transmission with the intent to use that device in commission with robbery, burglary, larceny, gambling or any violation of any provision of article 220 of the penal law. NY Penal Law section 140.40 **(16 Board Review)**.

A person is guilty of criminal use of an access device in the first degree when he knowingly uses an access device without the consent of an owner thereof with intent to unlawfully obtain telecommunications services on behalf of himself or a third person and so obtains such services in excess of one thousand dollars. NY Penal Law section 190.76 **(17 Board Review)**.

Mere words alone do not constitute physical force or interference in order to trigger criminal liability under section 195.05, the interference has to be, in part at least, physical in nature. In re Davan L., 91 N.Y. 2d 88 (1997) **(18 Board Review)**.

Isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the "public harm" mens rea necessary to support a disorderly conduct charge, People v. Baker, 20 N.Y. 3d 354 (2013) **(19 Board Review)**.

§ 87(2)(g)

§ 87(2)(b) The NYCHA footage confirmed that, § 87(2)(g) no significant crowd gathered and the small number of individuals who watched the incident appeared independent of § 87(2)(b) Video further showed that the only time § 87(2)(b) got closer was when the officers walked past him to leave. Furthermore, while PO Duran and Sgt. Frias said that § 87(2)(b) s actions prevented them from issuing the males C-summonses, these claims were disputed by PO Baez who said that the officers planned to warn and admonish the males regardless of § 87(2)(b) s actions. As the officers walked towards their car, it is undisputed that they and § 87(2)(b) got into a hostile verbal exchange in which he continued to curse and refused Sgt. Frias's order to disperse. However, § 87(2)(b) s audio indicates that the officers chose to remain on scene to argue with

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**Allegation (P) Abuse of Authority: On August 5, 2016, at the PSA 7 stationhouse, officers acted discourteously toward § 87(2)(b)**

**Allegation (Q) Abuse of Authority: On August 5, 2016, at the PSA 7 stationhouse, officers spoke discourteously to § 87(2)(b)**

§ 87(2)(b) said that when he was escorted into the stationhouse, it became very crowded as 30 to 40 officers gathered at the desk area to watch § 87(2)(b) s processing. When PO Baez found § 87(2)(b) s radio, Sgt. Paul Gebbia asked to see it, and said, "This transmits. Oh we got you for a felony!" All the officers in the stationhouse then began to clap and congratulate PO Duran, PO Baez, and Sgt. Frias § 87(2)(b) said that an officer said, "We got this motherfucker," but he could not hear who said that. § 87(2)(b) s earlier phone statements to the CCRB and IAB were generally consistent with his CCRB interview (02-04, 45, and 54 Board Review).

Upon reviewing § 87(2)(b) s audio of the incident, at 26:43, the second male states, "This is bullshit." Several officers are then heard in the background stating, "Oh, § 87(2)(b) multiple officers joke around and sound excited to see § 87(2)(b) At 29:03, PO Baez finds § 87(2)(b) s radio and at 29:30 Sgt. Gebbia states, "Oh wait a second. That transmits? Oh, my man, you are under." Several voices start to cheer in the background, and applause is heard. § 87(2)(b) states, "Listen, that's a violation right there, and, listen, look Administration section 10-02..." Sgt. Gebbia replies, "That's only when it doesn't transmit. This is illegal. You are now transmitting on our frequency. You are a collar, my man, you are a felony collar!" Several officers are heard to clap, cheer, catcall, and make statements along the lines of, "Got him! We got you asshole!" Sgt. Frias is heard saying to take § 87(2)(b) into the back. At 31:30 Sgt. Gebbia and other officers continue to celebrate § 87(2)(b) s arrest amongst themselves and describe him using profanity. Officers also tell other officers who come into the stationhouse to see who is in the holding cells (13 and 52 Board Review).

PO Baez identified Sgt. Gebbia's voice in § 87(2)(b) s recording at the stationhouse, but otherwise he, PO Duran, and Sgt. Frias were unable to identify any of the voices heard in § 87(2)(b) s recording (05-07 and 55 Board Review).

On December 8, 2017, the NYPD Department Advocate's Office confirmed that Sgt. Gebbia resigned from the NYPD on October 21, 2016 (**20 Board Review**).

§ 87(2)(g)

**Allegation (R) Abuse of Authority: On August 6, 2016, at § 87(2)(b) in the Bronx, Deputy Inspector Jerry O'Sullivan arrested § 87(2)(b)**

In his statements to the CCRB and the press, § 87(2)(b) alleged that high ranking NYPD officers put pressure on the Bronx DA to rescind the decline to prosecute decision and move forward with charges in retaliation for his § 87(2)(b) activities (**01-04, 28, 45, and 54 Board Review**).

Executive ADA Jeremy Shockett said that on August 6, 2016, while he was on vacation, he received a call from NYPD or DA officials notifying him that there was a problem with § 87(2)(b)'s criminal court complaint. ADA Shockett took calls from ADA Velez and Deputy Inspector O'Sullivan. ADA Shockett did not discuss the underlying facts of the case with Deputy Inspector O'Sullivan, but gave him instructions as to how the officers should proceed. Deputy Inspector O'Sullivan wanted § 87(2)(b) put through the system so that he saw a judge that night because there was a signed complaint against him. Deputy Inspector O'Sullivan also mentioned that the officers believed § 87(2)(b)'s radio may have been used to falsely report incidents and there might be a technological way to prove this. ADA Shockett firmly explained to Deputy Inspector O'Sullivan that he felt § 87(2)(b) should be issued a DAT because he did not think it was fair to hold § 87(2)(b) in custody any longer (**24 Board Review**).

ADA Velez's statement was generally consistent with that of ADA Shockett, but added that the decision to rescind § 87(2)(b)'s decline to prosecute form and pursue a criminal complaint was solely based on the information provided to her by PO Duran as Deputy Inspector O'Sullivan would have no first-hand knowledge of the incident. ADA Velez said that she took calls from multiple NYPD officials and that during these calls it was mentioned to her that there were suspicions that § 87(2)(b) was making threatening radio transmissions against an NYPD captain over NYPD frequency. However, she decided not to pursue these charges because they did not have enough information (**23 Board Review**).

ADA Waller did not speak with Deputy Inspector O'Sullivan during this incident and based the affidavit he prepared solely on the information given to him by PO Duran. ADA Waller said that he received information that there were suspicions that § 87(2)(b) was making false "officer down" transmissions on NYPD frequency using his radio. ADA Waller did not know who gave him this information and he did not pursue it further since a decision had already been made to not pursue that charge (**22 Board Review**).

PO Duran said that he did not speak to Deputy Inspector O'Sullivan over this case prior to § 87(2)(b) being transported to Central Booking and the decision to pursue specific charges against him was solely his as the arresting officer (**05 and 55 Board Review**).

Sgt. Frias did not speak to Deputy Inspector O'Sullivan about this incident, but did not recall whether he spoke to any higher ranking officers. Sgt. Frias said that the decision to put § 87(2)(b) through the system and not issue him a DAT was made somewhere up the chain of command (**06 Board Review**).

PO Baez did not speak with Deputy Inspector O'Sullivan about this incident, but said that Deputy Inspector O'Sullivan was aware of it **(07 Board Review)**.

Deputy Inspector O'Sullivan said that he was initially informed of § 87(2)(b)'s arrest by an unknown officer at an unknown time on August 6, 2016. This officer told Deputy Inspector O'Sullivan that a portable radio was recovered from § 87(2)(b) that was capable of transmitting on NYPD frequency. Deputy Inspector O'Sullivan was not present at the scene of § 87(2)(b)'s initial arrest and was not at the PSA 7 stationhouse when § 87(2)(b) was escorted in. Deputy Inspector O'Sullivan did not recall whether he was consulted on any of the arrest paperwork or § 87(2)(b)'s charges and he was not present when § 87(2)(b)'s arrest paperwork was prepared. Deputy Inspector O'Sullivan knew of § 87(2)(b) and his § 87(2)(b) organization prior to this incident because he came to a number of PSA 7's community council meetings, protests, and other events in the neighborhood. § 87(2)(b) was usually loud and created a scene. After learning of § 87(2)(b)'s initial arrest, Deputy Inspector O'Sullivan called the NYPD's Legal Bureau and spoke to attorney "Carrie Tolansky." This call was made because this was the first arrest Deputy Inspector O'Sullivan was aware of in which a radio, capable of transmitting on NYPD frequency, was recovered from § 87(2)(b). Deputy Inspector O'Sullivan needed clarification on the laws pertaining to this situation. Deputy Inspector O'Sullivan added that at the time of § 87(2)(b)'s arrest, the NYPD had problems in the Bronx with numerous individuals making false "officer in distress" transmissions, which endangered the public and police. There was no evidence to suggest that § 87(2)(b) made these transmissions other than his possession of a radio capable of transmitting on NYPD frequency. Deputy Inspector O'Sullivan spoke to PO Duran about the arrest, but did not remember whether this was before or after he called the Legal Bureau.

All of Deputy Inspector O'Sullivan's further actions toward § 87(2)(b) were guided by his instructions from the Legal Bureau. Deputy Inspector O'Sullivan did not know whether anyone at the Legal Bureau reached out to the Bronx DA's office, but said there must have been contact since § 87(2)(b) had been released and a decision had to be made about what to do with him. Deputy Inspector O'Sullivan did not recall whether he spoke to the Legal Bureau about whether § 87(2)(b) should be issued a DAT or about his OGA or disorderly conduct charges. Deputy Inspector O'Sullivan first said he did not speak to any ADAs, but later said he spoke to individuals in the DA's office, but he did not remember who or the nature of any conversations. Deputy Inspector O'Sullivan was later instructed by the Legal Bureau to re-arrest § 87(2)(b) and bring him to Central Booking to finish his processing as there was a signed affidavit against him and he had been released by mistake. Deputy Inspector O'Sullivan did not recall whether he reviewed any of § 87(2)(b)'s videos or any other evidence prior to his re-arrest. Deputy Inspector O'Sullivan was informed by an unknown officer that § 87(2)(b) was posting on social media that he was at § 87(2)(b). Deputy Inspector O'Sullivan instructed Lieutenant Tejeda, Lieutenant Dym, and Sgt. Contreras to go to the diner and take § 87(2)(b) back into custody. Deputy Inspector O'Sullivan sent supervisors to the diner and went there himself because he knew it would be a difficult situation and he wanted to ensure everything went smoothly. Once § 87(2)(b) was brought to Central Booking, Deputy Inspector O'Sullivan was not involved in writing up his charges, but was on the phone with the Legal Bureau. Deputy Inspector O'Sullivan did not recall whether he was involved in obtaining the subsequent search warrant for § 87(2)(b)'s radio. Deputy Inspector O'Sullivan did not order § 87(2)(b)'s arrest in retaliation for his § 87(2)(b) activities and did not retaliate against § 87(2)(b) in any way **(29 Board Review)**.

§ 87(2)(g)

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**Allegation (S) Offensive Language: On August 6, 2016, at § 87(2)(b) in the Bronx, Sergeant Raymond Contreras made remarks to § 87(2)(b) based upon the gender of**

**§ 87(2)(b)**

**Allegation (T) Offensive Language: On August 6, 2016, at § 87(2)(b) in the Bronx, Sergeant Raymond Contreras made remarks to § 87(2)(b) based upon the gender of**

**§ 87(2)(b)**

§ 87(2)(b) said that Sgt. Contreras used the term “sweetie” while telling her or § 87(2)(b) to back up. § 87(2)(b) was filming Sgt. Contreras, but was not sure who he was speaking to, because she was standing next to § 87(2)(b) and § 87(2)(b) who are all female. § 87(2)(b) verbally objected to the comment, but § 87(2)(b) did not respond. § 87(2)(b) took the comment to be “macho and contemptuous” and did not believe that Sgt. Contreras used the term to be polite. § 87(2)(b)’s phone statement was generally consistent with her CCRB interview **(30-31 Board Review)**.

§ 87(2)(b)’s phone statement was generally consistent with that of § 87(2)(b) but she added that she thought Sgt. Contreras was speaking to her because he made eye contact with her **(32 Board Review)**.

§ 87(2)(b)’s phone statement was generally consistent with those provided by § 87(2)(b) and § 87(2)(b) **(33 Board Review)**.

Sgt. Contreras acknowledged saying, “Sweetheart, you can’t be on top of us like that” to § 87(2)(b) in an attempt to sound “human like” in hopes she would comply with his instructions to back up. Sgt. Contreras did not intend to demean § 87(2)(b) and there was no sexual connotation to his statement **(34 Board Review)**.

In § 87(2)(b)’s second video, at 03:50, § 87(2)(b) gets out of the booth she was sitting in and moves directly behind Sgt. Contreras. Sgt. Contreras then turns around, looks directly into § 87(2)(b)’s camera and says, “You can’t be on top of me sweetie. You can’t be on top of me like that.” Sgt. Contreras then looks at § 87(2)(b) and says, “Sweetheart, please retire to a zone of safety.” § 87(2)(b) then tells Sgt. Contreras, “You call your mother sweetheart. You do not call me that. Alright? You address your mother like that. You don’t address me like that.” Outside of the diner, § 87(2)(b) stands in front of § 87(2)(b) and Sgt. Contreras says, “Sweetheart can you move?” **(35-36 Board Review)**

Officers are prohibited from discourteous and disrespectful remarks regarding another person’s gender (P.G. 203-10) **(37 Board Review)**.

§ 87(2)(g)

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**Allegation (U) Abuse of Authority: On August 6, 2016, at § 87(2)(b) in the Bronx, Lieutenant Ramon Tejeda threatened to arrest § 87(2)(b)**

§ 87(2)(b) denied physically obstructing the officers as they arrested § 87(2)(b) but said that she followed them closely. § 87(2)(b) also said that she was “in her own world,” due to the shock of § 87(2)(b) being arrested and did not clearly remember everything that happened.

§ 87(2)(g) (30-31 Board Review).

Sgt. Contreras said that he and the other officers told § 87(2)(b) to back up numerous times while inside the diner. Outside the diner, § 87(2)(b) became loud and boisterous, yelling at the officers, “You motherfuckers!” Sgt. Contreras believed that § 87(2)(b)’s behavior did constitute obstruction, but did not feel that her arrest was necessary as there were enough officers to handle the scene. Sgt. Contreras did not recall § 87(2)(b) ever grabbing him or § 87(2)(b). However § 87(2)(b) could have been arrested for OGA or disorderly conduct if her behavior persisted. Sgt. Contreras said that Lieutenant Tejeda told § 87(2)(b) to calm down, but he did not recall him telling her that she could be arrested (34 Board Review).

Deputy Inspector O’Sullivan’s statement was generally consistent with that of Sgt. Contreras, but he said he did not know whether § 87(2)(b) could have been arrested if her behavior continued. Deputy Inspector O’Sullivan also added that § 87(2)(b) helped out by trying to calm § 87(2)(b) down (29 Board Review).

Upon reviewing § 87(2)(b)’s second video of the incident, at 03:13 § 87(2)(b) says loudly, “This is pissing me off! I’ll tell you that § 87(2)(b) tells § 87(2)(b) to relax while gesturing with his hand. At 03:50 § 87(2)(b) gets up out of the booth (which is seen in the mirror) and walks directly behind Sgt. Contreras. Lieutenant Dym, Sgt. Contreras, Lieutenant Tejeda, and § 87(2)(b) all tell § 87(2)(b) and the other females to back up multiple times, but they fail to move. At 04:25, Sgt. Contreras handcuffs § 87(2)(b) immediately yells, “Fuck! Fuck!” Lieutenant Dym looks at the camera and instructs the females to back up multiple times, but they fail to move and § 87(2)(b) loudly refuses. Lieutenant Dym then holds his palm out toward the camera. At 05:00 the officers begin escorting § 87(2)(b) toward the entrance of the diner. Lieutenant Dym asks the females to move so that the officers can walk by and § 87(2)(b) asks, “Why are you arresting him?” At 05:17, Lieutenant Dym and Lieutenant Tejeda briefly prevent the females from following § 87(2)(b) out of the diner and Lieutenant Dym tells them they are too close. The camera then follows Lieutenant Tejeda out the door. At 05:25 § 87(2)(b) is being led by Sgt. Contreras to the curb. § 87(2)(b) says, “Yea, but I don’t want nobody else to get arrested.” Sgt. Contreras says, “You gotta tell them to stop...” § 87(2)(b) walks in front of § 87(2)(b) and Sgt. Contreras and yells, “Babe! Why you arresting him?” Sgt. Contreras asks § 87(2)(b) to move, but she fails to comply and yells, “Why are you arresting him?” § 87(2)(b) tells the officers, “Take her over there. Take her over there.” At 05:35 the camera shakes and Lieutenant Tejeda is heard saying, “...before you get arrested.” At 05:39 Lieutenant Tejeda is in front of the camera holding his hands out and § 87(2)(b) is heard telling § 87(2)(b) “You have to calm down. You have to calm down.” At 05:41 § 87(2)(b) looks down the street and says, “Sullivan! Can we go? Can we go Sullivan? Please, come on.” Lieutenant Dym says, “Let’s go” and Sgt. Contreras leads § 87(2)(b) to the back left door or a black, unmarked sedan. § 87(2)(b) tells Lieutenant Dym that he does not want the officers to arrest anyone else. Lieutenant Dym tells § 87(2)(b) “ok” and pats his arm. Sgt. Contreras adds, “We’re not going to arrest nobody else.” § 87(2)(b) screams, “This is some fucked up shit! He just spent a day and a half in jail!” while walking next to Lieutenant Dym who tells § 87(2)(b) to calm down repeatedly. Deputy Inspector O’Sullivan and Lieutenant Tejeda both tell § 87(2)(b) “Don’t touch the cops” more than once. § 87(2)(b) screams, “You don’t touch him!”



Lieutenant Dym replies, "Alright ma'am. Just take it easy." § 87(2)(b) screams again, "He did nothing wrong! You mother fuckers!" Lieutenant Dym tells § 87(2)(b) to take it easy. At 06:35 § 87(2)(b) yells, "I am sick of this shit!" **(35-36 Board Review)**

A person is guilty of obstructing governmental administration in the second degree when they intentionally obstruct, impair, or pervert the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. NY Penal Law section 195.05 **(15 Board Review)**.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation (V) Abuse of Authority: On August 6, 2016, at Bronx Central Booking an officer searched § 87(2)(b) s recording device.**

§ 87(2)(b) said that after he was released a second time, he received automatic emails from a program he installed that notifies him and takes a picture whenever someone tries to unlock his phone with the wrong password. In his earlier phone statement, § 87(2)(b) said that when he arrived at Central Booking, the officers took his phones and said they would “make this quick.” In a later phone statement, § 87(2)(b) said that Deputy Inspector O’Sullivan explained after his second release that the Bronx District Attorney and the NYPD Legal Bureau said officers could retain custody of § 87(2)(b) s cell phones **(02-03, 28, 45, 54, 59, and 60 Board Review)**.

In his video interview with the Bronx DA’s office, at 59:43 § 87(2)(b) s attorney § 87(2)(b) mentioned that they were aware of a search warrant obtained by officers to access the contents of § 87(2)(b) s phones. ADA Peter Kennedy said he was unaware of such a warrant. At 01:43:30 § 87(2)(b) opened his first “LockWatch” app email notification in front of § 87(2)(b). § 87(2)(b) ADA Kennedy, ADA Gary Lee Heavner, and Det. Peter Moro. The email said that “someone” tried to access his phone on August 6, 2016 at 10:46 p.m. No photos were taken by the app. At 01:48:00, § 87(2)(b) opened a second email notification that noted “someone” attempted to access his phone on August 6, 2016, at 10:48 p.m. No photos were taken, however a sound clip was recorded. § 87(2)(b) was unable to play the sound clip. Due to weak cellular service. At 01:52:32, § 87(2)(b) opened a third email notification that “someone” attempted to access his phone on August 6, 2016 also at 10:46 p.m. No photos were taken, but a sound clip was recorded. § 87(2)(b) was also unable to play this sound clip due to weak cellular service **(38-39 Board Review)**.

§ 87(2)(b) provided two 20 second audio recordings to the CCRB that he alleged were made when officers tried to access his phones. In the first recording, police radios are heard and two officers are discussing their tours for the next day and one says, “Let’s make sure this thing isn’t on.” In the second recording, voices are heard and then an officer is heard saying, “Excuse me sir. We’re going to make this quick. Ok?” § 87(2)(b) is heard replying, “Ok” **(40-42 Board Review)**

PO Duran, Sgt. Frias, PO Baez, and Sgt. Contreras all denied accessing § 87(2)(b)'s cell phones devices. Sgt. Contreras added that he never handled § 87(2)(b)'s phones and did not recall whether they were removed from him prior to § 87(2)(b) being placed in a police vehicle **(05-07 and 34 Board Review)**.

Deputy Inspector O'Sullivan did not recall whether he ever searched § 87(2)(b)'s cell phones, directed anyone to search them, or ever handled them **(29 Board Review)**.

The search warrant obtained by PO Duran on August 8, 2016 does not authorize officers to search § 87(2)(b)'s cell phones **(43 Board Review)**.

Property invoice# § 87(2)(b) prepared by PO Baez on August 7, 2016, at 12:35 a.m. lists two cell phones with minor scratches vouchered at 12:35 a.m. as investigatory property. At 1:10 a.m. these items were listed as part of the "Det. Tavares case from Midtown South" **(44 Board Review)**

§ 87(2)(b) said that he believed officers attempted to access his phone because of the emails he received from his LockWatch app and provided two audio recordings to the investigation that were captured in this attempt. This app showed three alleged attempts to unlock his phone on August 6, 2016 with two made at 10:46 p.m. and one at 10:48 p.m. Upon reviewing these recordings, one captures two officers making small talk with police radios in the background. The officer also says that they had to make sure some object was off. The other recording captures an officer telling § 87(2)(b) that things will be quick and he is heard replying "ok." Based on the date and times shown by § 87(2)(b)'s app, it is apparent that the two recordings were of officers processing § 87(2)(b) at Bronx Central Booking prior to him being issued a DAT. During this processing, officers would have needed to remove and voucher § 87(2)(b)'s property prior to his later release and thus they had a legitimate reason to be handling his phone. The second recording indicates that § 87(2)(b) was present during these alleged attempts to access his phone, but he is not heard to make any objection nor did he complain that his phones were specifically searched at this time during any of his statements.

§ 87(2)(g)

**Allegation (W) Other Misconduct: There is evidence suggesting Police Officer Elvis Duran provided a false official statement in violation of PG 203-08.**

The CCRB recommends that the NYPD conduct further investigation as there is evidence to suggest that PO Duran provided a false official statement. The evidence is as follows:

In an affidavit prepared by ADA Waller for § 87(2)(b)'s criminal court complaint, based off of statements made to him by PO Duran who subsequently reviewed and signed it, it was written that PO Duran approached two males to issue summonses when § 87(2)(b) ran towards him yelling, "Fuck you guys! Do your job right! You motherfuckers don't know what you're doing! You're always bothering people! You're always killing people!" It was also written that PO Duran's partner asked § 87(2)(b) to keep his distance and move away from the officers, but as PO Duran and his partners walked away, § 87(2)(b) followed them at a close distance. PO Duran's partner again asked § 87(2)(b) to stay away and disperse. § 87(2)(b) continued to follow the officers and shout, "I know my fucking rights! I can do whatever the fuck I want!" It was written that as a result of § 87(2)(b)'s conduct, PO Duran experienced annoyance, alarm, and fear for his physical safety and was unable to investigate and issue summonses to the males **(21 Board Review)**.

ADA Waller said that when he arrived for work at the complaint room, he was informed by ADA Velez that senior staff at the Bronx DA's office had called her and informed her that the NYPD was requesting that § 87(2)(b)'s case be prosecuted despite ADA Fitzpatrick's initial

decision not to. ADA Velez instructed ADA Waller to write up OGA charges against § 87(2)(b). ADA Waller interviewed PO Duran and prepared the aforementioned affidavit, which he then had PO Duran review and sign. Due to the highly unusual circumstance of DA senior staff sending instructions to the complaint room, ADA Waller made sure that PO Duran's statement in the affidavit was completely accurate and used as much of PO Duran's direct language as possible. All the information contained in the affidavit came exclusively from PO Duran. ADA Waller did not review any audio or video recordings for this case prior to filing the affidavit (**22 Board Review**).

ADA Velez said a decision was made to rescind § 87(2)(b)'s decline to prosecute form and file a criminal complaint against him for OGA based on information given to her by PO Duran. During this conversation, PO Duran told ADA Velez that § 87(2)(b) was arrested because he and the other officers were trying to issue summonses to individuals when § 87(2)(b) arrived on the scene, mouthed off, cursed at them, and encroached on their space. These actions made PO Duran and the other officers nervous so they did not issue the summons and had to focus on § 87(2)(b) (**23 Board Review**).

Executive ADA Shockett said that on Monday August 8, 2016 he had a five minute conversation in his office with PO Duran when PO Duran came to the DA's office to apply for the search warrant on § 87(2)(b)'s radio. ADA Shockett told PO Duran, "This is probably on video, so everything you say better be 110% right because he probably recorded it." PO Duran told ADA Shockett that everything he was saying was 100% right so not to worry about it (**24 Board Review**).

During his CCRB interview, PO Duran repeated that § 87(2)(b) approached and began to curse at the officers, who told him to not get any closer. § 87(2)(b) ignored their instructions and got to within an arm's length of PO Baez. PO Duran repeated that, due to § 87(2)(b)'s actions, the officers did not feel it was safe to finish investigating and issue summonses to the males. PO Duran added that a crowd of six to 10 individuals formed due to § 87(2)(b)'s actions. On being shown § 87(2)(b)'s edited video of the incident, PO Duran pointed out that between 01:29 and 01:34, the video showed § 87(2)(b) repeatedly moving close to the officers and then moving away. It was pointed out to PO Duran that § 87(2)(b) appeared to be merely zooming his camera in and out. PO Duran responded that during the incident § 87(2)(b) was walking closer at that point. PO Duran also commented that § 87(2)(b)'s video was edited and did not capture the full scope of the incident (**05 and 55 Board Review**).

Sgt. Frias's statement was generally consistent with PO Duran's but he said that § 87(2)(b) stayed approximately 10 feet from the officers during the stop and complied with instructions to not get closer (**06 Board Review**).

PO Baez's statement was consistent with that of Sgt. Frias except he said that the area was busy and so he was not sure whether the few bystanders who stopped to watch did so because of § 87(2)(b). PO Baez also said that the officers would have warned and admonished the males regardless of § 87(2)(b)'s actions because he felt bad for one of the males who had a disabled arm (**07 Board Review**).

Upon reviewing NYCHA security footage at 00:57 a male in dark clothing, (who the investigation identified as § 87(2)(b)) is observed standing on the sidewalk to the right. At 01:34, § 87(2)(b) positions himself on the sidewalk beside where the officer's vehicle is double parked. At this point, he appears to be at least 20 feet from the officers. At 04:46, the officers walk in the direction of their vehicle past § 87(2)(b) who is still on the sidewalk (**08 and 50 Board Review**).

Upon reviewing § 87(2)(b)'s edited video of the incident, at 00:31 PO Baez points at § 87(2)(b) and tells him to not come closer. Immediately after these comments, the video appears to briefly stop and start again. § 87(2)(b) still appears to be at least 20 feet from the

officers. At 03:12 the officers walk past § 87(2)(b) toward their vehicle (**09 and 51 Board Review**).

Upon reviewing § 87(2)(b)'s audio recording, at 15:05 PO Baez can be heard telling § 87(2)(b) to stay back. § 87(2)(b) replies that he is at a reasonable distance. § 87(2)(b) then criticizes the officers' actions using profanity. At 18:35 the officers and § 87(2)(b) say good night to each other.

Later in the recording at 03:01:50, when the officers are in the stationhouse discussing what to charge § 87(2)(b) with, Sgt. Frias says, "OGA? Not really. I don't think we have OGA. Just the dis-con... Uh, I mean, we could charge him with it, but you know what the DA's going to say, that he didn't come into physical contact with us. In order to keep OGA." PO Duran and PO Baez said that § 87(2)(b) said, "Fuck you! Mother Fucker!" to PO Baez. Sgt. Frias asked how close § 87(2)(b) was, "10 feet away?" PO Baez then corrected that § 87(2)(b) was 15 or 20 feet away and did not come closer because PO Baez told him not to (**13 and 52 Board Review**). § 87(2)(b)'s arrest report shows that he was charged with disorderly conduct for refusing to move on, unlawful possession of radio devices, and criminal use of an access device (**26 Board Review**).

In an affidavit prepared by ADA Nicole Fitzpatrick declining to prosecute § 87(2)(b) she noted that § 87(2)(b) could not be prosecuted for refusing a lawful order to disperse because there was not enough information to say he congregated with others and § 87(2)(b) could not be prosecuted for unlawful possession of a radio device because there was no information that he intended to use that device in commission of robbery, burglary, larceny, gambling, or any provision of 220 of the penal law. § 87(2)(b) could not be prosecuted for criminal use of an access device because § 87(2)(b)'s radio did not constitute an access device (**27 Board Review**).

The intentional making of a false official statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the department, absent exceptional circumstances. Examples of circumstances in which false statements may arise include, but are not limited to, lying under oath during a civil, administrative, or criminal proceeding or in a sworn document or an interview pursuant to Patrol Guide 211-14, "Investigations by Civilian Complaint Review Board" and lying in an official Department document or report (P.G. 203-08) (**25 Board Review**).

ADA Waller's affidavit, signed by PO Duran, said that § 87(2)(b) ran up to the officers while cursing, causing the officers to fear for their safety, and impeding their investigation and the issuing of summonses. PO Duran confirmed the accuracy of this information to ADA Velez and Executive ADA Shockett. During his CCRB statement, PO Duran repeated these same basic facts and further elaborated that § 87(2)(b) approached to within arms-length of PO Baez and failed to comply with multiple instructions to move back. § 87(2)(g) Sgt. Frias and PO Baez who both said that § 87(2)(b) obeyed PO Baez's instruction to stay back and only interfered by cursing. PO Baez even added that the officers were not planning on issuing the males summonses regardless of § 87(2)(b)'s actions. § 87(2)(g)

§ 87(2)(b)'s audio recording also captured Sgt. Frias explaining, in PO Duran's presence, that OGA was not an appropriate charge because § 87(2)(b) did not physically interfere. Sgt. Frias therefore instructed PO Duran to only charge him with disorderly conduct and the radio offenses. Immediately after this statement by Sgt. Frias, PO Baez is heard in the same recording confirming that § 87(2)(b) stood 15 feet back and complied with his instruction to not come any closer. § 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

## Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (**57 and 58 Board Review**).
- PO Duran has been a member of the NYPD for nine years and has been the subject of nine other CCRB cases involving 16 allegations. Of these allegations, a stop and a vehicle search allegation were substantiated in CCRB# 201108423 for which the CCRB recommended charges, but the NYPD issued no disciplinary action. In addition to the substantiated allegations, PO Duran also has two discourtesy allegations in CCRB# 201007861, which was unsubstantiated and 201506541, which was truncated. PO Duran was also exonerated in CCRB# 201403900 for a retaliatory summons allegation. § 87(2)(g)

also had one frisk allegation in CCRB# 20113666, which was unsubstantiated, and two search allegations in CCRB#s 20113666 and 201607176, which were unsubstantiated.

- PO Baez has been a member of the NYPD for five years and has been the subject in five other CCRB cases involving 22 allegations, including one substantiated allegation. In CCRB# 201607176 a stop allegation was substantiated for which the CCRB recommended command discipline A, but there was no final NYPD disposition. In addition to the substantiated allegation, PO Baez had three discourtesy allegations in CCRB#s 201507072 and CCRB# 201607176, which were unsubstantiated, and two stop allegations in CCRB#s 201705231. Finally, CCRB# 201706642, which is under active investigation, § 87(2)(g) [REDACTED]
- Deputy Inspector O’Sullivan has been a member of the NYPD for 25 years and has been the subject of six other CCRB cases involving 13 allegations and no substantiated allegations. § 87(2)(g) [REDACTED]
- Sgt. Contreras has been a member of the NYPD for 15 years and has been the subject in one other CCRB case involving one allegation that was not substantiated. § 87(2)(g) [REDACTED]
- Lieutenant Tejeda has been a member of the NYPD for 12 years and has been the subject in three other CCRB cases involving five allegations and no substantiated allegations. § 87(2)(g) [REDACTED]

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b) [REDACTED] filing a lawsuit for this incident.
- On September 28, 2017, a FOIL request to the Office of the Comptroller confirmed that § 87(2)(b) [REDACTED] filed a Notice of Claim for this incident on January 13, 2017, alleging false arrest, false imprisonment, battery, confiscation of property, tampering of property, targeted retaliation for his anti-police political beliefs, denial of the right to a fair trial, and malicious prosecution (**48 Board Review**).
- § 87(2)(b) [REDACTED]
- On January 29, 2018, a FOIL request was sent to the Office of the Comptroller for any Notices of Claim filed by § 87(2)(b) [REDACTED] for this incident and will be added to the case file upon receipt.
- § 87(2)(b) [REDACTED] (**53 Board Review**).
- No Notices of Claim could be requested for § 87(2)(b) [REDACTED] without further information to confirm her identity.
- An OCA search could not be performed for § 87(2)(b) [REDACTED] without further information to confirm her identity.

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Squad No.: 12

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date